

FOR PSA MEMBERS: DEPARTMENT OF DEFENCE (DOD)

14-01-2020

Demilitarisation judgment in favour of PSA but ...

The PSA, acting on behalf of members, instituted proceedings against the Department based on section 77 of the *Basic Conditions of Employment Act of 1997 (Act 75 of 1997)*. The Department opposed the PSA's action in that it had prescribed and that members and/or the PSA failed to comply with the *Institution of Legal Proceedings Against Certain Organs of the State Act of 2002 (ILPA 40 of 2002)*.

Section 3 of *ILPA* provides that a party before instituting a claim against a state organ must issue a notice in writing. This must be done within six months from the date on which the debt becomes due. The PSA had applied for condonation as a response to the employer's special plea. The state opposed the condonation.

The presiding Judge had to deal with the **prescription plea** as well as the **condonation application**.

The judgment on **prescription plea** was that no claims can be instituted relating to the period before October 2011. Prescription time begins against the claimant when the minimum facts that are necessary to institute the action becomes known and the identity of debtor. The plea raised by the employer was upheld. The PSA cannot claim as far back as 1998. The Court held that the members had known since December 1998 that monthly they were not receiving what was due to them. Prescription was immediately enforceable.

In respect of **condonation** for the period from October 2011, up to the date of instituting an action, the PSA contended that formal grievances were submitted. As late as November 2014 the Department indicated that it was dealing with these. Section 3(4)(a) of *ILPA* provides that if good cause exists and the Department was not unreasonable prejudiced by the failure, the Court may grant condonation. The application by PSA is successful to pursue the matter.

The Department filed a notice of application for leave to appeal against the judgment. The PSA's advocate will apply for the upliftment of the judgment.

Ivan Fredericks
GENERAL MANAGER